



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

August 10, 2004

TO: All Interested Parties

FROM: Peri Maxey, Assistant Director
Property Tax Division

**SUBJECT: PROPOSED RULE DRAFT - IMPLEMENTATION OF
LAWS OF 2004, CHAPTER 236**

Laws of 2004, chapter 236, contains the new property tax exemption enacted by the 2004 Legislature (otherwise known as Substitute House Bill 1322), which took effect June 10, 2004. The new exemption pertains to "*all property belonging exclusively to any federally recognized Indian tribe located in the state, if that property is used exclusively for essential government services.*" To assist the assessors in implementing this new exemption, the Department is proposing the adoption of a new rule, WAC 458-16-1000, entitled "Property belonging to federally recognized Indian tribes - Definitions - Declaration process - Appeal rights."

The Department aims to provide guidance to assessors and Tribes to ensure that the new exemption is administered fairly and uniformly throughout the 39 counties. This exemption is available to qualifying property for taxes payable in 2005, and thereafter, based on its ownership and use as of June 10, 2004, and thereafter. After this legislation was enacted, the Department solicited comments and met with interested parties. The enclosed rule draft is a result of the discussions and comments we received to date. The rule draft explains the exemption, defines essential government services, explains how the exemption may be obtained, and explains how a Tribe may appeal a denial of the exemption.

The eligibility of unimproved or bare land for exemption is still under consideration. That is, is unimproved or bare land used for "essential government services?" The phrase is defined in Chapter 236 as "services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services." The rule draft discusses unimproved or bare land used to provide access to water or land as is reasonably necessary to the exercise of established treaty rights by a Tribe or tribal members, used to protect and manage environmentally sensitive areas, used to preserve historical, cultural, and spiritual activities, or used for forest lands. It is clear to us these uses fall within the definition of "essential government services." Questions remain about how to treat other unimproved or bare land. One opinion is that holding unimproved or bare land is an essential government service, and therefore, it should be exempt. Another opinion is that unimproved or

bare land is not used for any purpose, and therefore, it cannot be exempted. The support for two opinions is listed below:

- Acquiring and holding land is an activity undertaken by tribal, state, federal, and local governments. The acquisition and consolidation of land in tribal ownership is a policy promoted by federal legislation. Like other governmental entities, a tribe may hold land unimproved or vacant while it considers the best current and future uses of the land. Acquisition of land within Indian country solves jurisdictional difficulties for tribes.

The acquisition and consolidation of unimproved or bare land is an essential function of tribal government. A primary purpose of many tribes, whose sovereignty has been eroded in other respects, is to preserve and develop the culture. A land base is necessary to achieve this goal.

Unimproved or vacant land should be considered exempt until such time as the property is used for a disqualifying activity. At that point, the exemption would be removed.

An additional question related to unimproved land is whether it makes a difference if the land is located within Indian country? Within this geographic area the tribe has an obvious governmental interest.

- Property tax exemptions have been historically granted based on the use of the property. Chapter 236 provides an exemption for "all property....used exclusively for essential government services." Unimproved or bare land does not have an active use on the property. Nor does this type of land represent a "service." Case law requires the Department to strictly construe an exemption statute in a fair manner utilizing the ordinary meaning of the language. The exemption may not be enlarged by construction. Absent "use" of the property for an essential government service, unimproved or bare land is not eligible for the exemption.

Your thoughts and comments on these possibilities or ideas and other approaches, as well as the enclosed rule draft are of particular interest to the Department. We invite all interested parties to comment, either pro or con, on any of the ideas presented above, or to provide any suggestions for alternative treatments. We also ask that you provide us with a legal analysis or other support for your opinion.

Because Tribes are now entitled to claim this exemption, the Department is circulating the proposed rule so that it may adopt an emergency rule sometime in September 2004 with the maximum of comment from all interested parties. The purpose of the emergency rule is to inform Tribes of the process for claiming the exemption and to provide assessors with information necessary to process the exemption declarations.

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The Department realizes the time allotted for review and comment on the proposed rule draft is limited. However, we believe it is important to have an emergency rule in place early in September so assessors will be able to process the exemption declaration before taxes are levied for collection in 2005.

Please feel free to submit any written comments either in writing, FAX, or by e-mail to either of the following persons listed below. Written comments may also be submitted at the public meeting about the proposed rule scheduled for 10:00 a.m. on September 2, 2004, at the address listed on the enclosed Pre-proposal Statement of Inquiry, the CR-101 form. Comments may be submitted to:

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Nathan Schreiner
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Kim's email address is kimq@dor.wa.gov and Nathan's email address is NathanS@dor.wa.gov .

The Department is committed to working with all interested parties to develop a common sense, useful, and informative application of the law. We look forward to hearing from you.

PM:slc
Enclosures